

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TOD CURTIS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 08 cv 03527
	)	Judge Guzman
IRVANA K. WILKS, et al.,	)	Magistrate Nolan
	)	
Defendants.	)	

**PLAINTIFFS' SUR-REPLY IN OPPOSITION TO CERTAIN DEFENDANTS' MOTION  
REQUESTING THAT THE COURT ABSTAIN FROM EXERCISING JURISDICTION  
OVER THE COMPLAINT**

Plaintiffs, Tod Curtis, individually and as a beneficiary, First United Trust Company, as Trustee under Trust No. 10510, and Elto Restaurant Inc., submit this Sur-Reply to Defendants Wilks, Janonis, Cooney, Schroeder, Roels, Krupa and the Village of Mount Prospect's Reply in Further Support of Their Motion Requesting That the Court Abstain From Exercising Jurisdiction Over the Complaint (the "Reply"):

There is a glaring omission in Defendants' Reply. There is no longer a parallel proceeding pending in the Chancery Division of the Circuit Court of Cook County, and Defendants are aware of that fact. On August 18, 2008, Chancery Division Judge Richard Billik, the judge presiding over that matter, decided *sua sponte* to recommend transfer of that action to the building court call in the Third Municipal Division because of the absence of any remaining issues meriting equitable relief and his belief that the matter belonged in building court, nor the Chancery Division. See August 18, 2008 Order, attached hereto at Exhibit A. On August 21, 2008, Chancery Division Presiding Judge Dorothy Kinnaird accepted Judge Billik's recommendation and transferred the matter to the Third Municipal District, where it has been assigned to building court.<sup>1</sup> See August 21, 2008 Order, attached hereto as Exhibit B.

Thus, Defendants' statements in their Reply that the Chancery Division case is "ready for a [preliminary injunction] hearing that will decide the reasonableness of Defendants' code

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<sup>1</sup> Defendants filed their Reply with the Court on September 2, 2008, some two weeks after the presiding judge transferred the case out of the Chancery Division.

enforcement actions at the Subject Property” and suggesting that a ruling on their motion for preliminary injunction “will have *res judicata* effect indicating whether or not the Village’s inspections were a justified exercise of police power...” are inaccurate. *See id.* at 9, 14. No preliminary injunction hearing is presently scheduled or contemplated by the parties, and there is no case even pending in the Chancery Division. In fact, Plaintiffs’ restaurant at issue in the former Chancery Division matter is open and operating by agreement of the Village of Mount Prospect and Plaintiffs (thus mooted the request for injunctive relief). Instead of preparing for a preliminary injunction that will have “*res judicata* effect,” the parties to the former Chancery Division matter are simply awaiting their initial appearance before Judge Alfred Levinson in the building court division of the Third Municipal District.

This omission of a key fact in Defendants’ Reply further demonstrates that Defendants have failed to meet their burden to prove that *Colorado River* abstention is appropriate here. Thus, as fully set forth in Plaintiffs’ Response in Opposition to Certain Defendants’ Motion Requesting That the Court Abstain From Exercising Jurisdiction Over the Complaint, the Court should deny the Motion to Abstain.

**TOD CURTIS, individually and as beneficiary,  
FIRST UNITED TRUST COMPANY, as  
Trustee under Trust No. 10510, and ELTO  
RESTAURANT INC., an Illinois corporation,**

By: s/ William M. McErlean  
One of Their Attorneys

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Order

(2/24/05) CCG N002

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

In the Matter of the Administrative  
search of the Premises, including all interior  
and exterior areas located at 6-18 West  
Busse Avenue, Mount Prospect, Illinois

v.

08M3 001171  
 Consolidated  
 No. into 08C412059,  
 which was consolidated  
 into 08C412821

## ORDER

This matter coming before this court on a motion to suppress evidence as a result of an administrative search warrant issued on March 4, 2008 and to quash the warrant entered by Judge Cerone Marisie sitting in the Third District Circuit Court of Cook County located in Rolling Meadows; the matter having initially been noticed for presentation before Judge Marisie or another Judge sitting in courtroom 204 of the Third District courtroom, but on upon motion of movant to reassign the matter to a related case, 08C412059, by Judge Maddox on April 21, 2008; and that case 08C412059 filed by plaintiff Tod Curtis, et al. entered an order assigning case 08M3-001171 to this court's call; this court having been previously assigned case 08C412059 filed by Tod Curtis, et al. v. Village of Mt. Prospect; and that 08C412821 filed by the Village of Mt. Prospect against TOP Curtis and others seeking injunctive relief and other remedies against the operation of the ELto Restaurant because, among other things, for Building, alleged Property Maintenance, Fire Prevention and Health Code violations, had been consolidated into case 08C412059 before this court on about April 15, 2008, and that case 08C412821 has been dismissed voluntarily; IT IS HEREBY ORDERED: <sup>10/6/10</sup>

THE cases 08M3-001171 involving a review of an administrative search warrant and by a court in the Third District and 08C412821 involving a lawsuit concerning the enforcement of building, housing and zoning ordinances of Mt. Prospect, a municipal corporation, and an alleged dangerous building in Mt. Prospect shall be transferred to the presiding Judge of the Chancery Division, Pursuant to Circuit Court of Cook County Rule 2.3 (b)(6), for purposes of transferring the cause to the Municipal Department of the Third District of the Circuit Court in Cook County.

Atty. No.:

Name:

Court

Atty. for:

Address:

City/State/Zip:

Telephone:

ENTERED:

And upstate building in Mt. Prospect shall be transferred to the presiding Judge of the Chancery Division, Pursuant to Circuit Court of Cook County Rule 2.3 (b)(6), for purposes of transferring the cause to the Municipal Department of the Third District of the Circuit Court in Cook County.

Judge

ENTERED

Judge's No.

AUG 18 2008

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 JUDGE RICHARD G. BROWN, 1585

## TRANSFER ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CHANCERY DIVISION

In the matter of The Administrative  
Search of the Premises, including all  
interior and exterior areas located at 6-181  
West Busse Avenue, Mount Prospect, Illinois  
v.

No. 08 m 3 001171  
consolidated into  
08 CH 12059, which was  
consolidated into 08 CH 12021

The above-entitled and numbered cause having been previously assigned to

Judge Billik, Chancery Calendar # 2

has been transferred to the Presiding Judge of the Chancery Division for the purpose of transferring said cause to the

- ☐ Law Division  
☐ Law Division, (Tax Section)  
☐ County Division  
☐ Probate Division  
☐ Domestic Relations Division  
☒ Municipal Department,

- ☐ District 1  
☐ District 4

- ☐ District 2  
☐ District 5

- ☒ District 3  
☐ District 6

**ENTERED**  
AUG 18 2008

JUDGE  
RICHARD J. BILLIK - 1585

The reason for said transfer: The case initially assigned to this court, 08 CH 12059, has been  
dismissed pursuant to plaintiffs' motion, and an order was entered on 6/19/08 dismissing  
that cause. CASE NO. 08 MC 3001171 involves a review of an administrative search warrant  
issued by a court in the Municipal Department Third District and CASE NO. 08 CH 12059 involves  
Mt. Prospect, a municipality, seeking to enforce its building, housing and zoning ordinances  
against a restaurant and building in Mt. Prospect. Both causes should be transferred to the Presiding  
Judge of the Chancery Division for the purpose of transferring said causes to the Municipal  
Department in the Third District Circuit Court, pursuant to Circuit Court of Cook County  
Rule 2-3 (b) (6) providing for the Municipal  
Department hearing certain actions and proceedings  
filed by municipal corporations.

IT IS HEREBY ORDERED that the said cause be and the same is hereby transferred to  
Judge Joe Billik Judge's No. 1585

Judge JOSEPH J. URSO, Presiding Judge of the 3RD MUNICIPAL  
DISTRICT

DATE: 8/21, 08

**ENTERED**  
DOROTHY KIRIE KINNAIRD  
PRESIDING JUDGE  
CHANCERY DIVISION

No. 276  
AUG 21 2008

JUDGE  
DOROTHY KIRIE KINNAIRD

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS